

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**LYNDA SUE LICHTGARN v. STATE OF TENNESSEE**

**Direct Appeal from the Criminal Court for Davidson County  
No. 10365 & A Robert E. Burch, Judge**

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**No. M2005-00965-CCA-R3-PC - Filed July 6, 2006**

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Petitioner, Lynda Sue Lichtgarn, pled guilty, on January 9, 1990, to two counts of premeditated first degree murder. She received two concurrent sentences of life imprisonment. The indictments and the judgments reflect that the offenses occurred on October 5, 1986. On January 8, 1993, Petitioner filed a petition for post-conviction relief and had the assistance of retained counsel. Following an evidentiary hearing, the trial court dismissed the post-conviction petition. No appeal was taken from this disposition of the case. On November 23, 2004, Petitioner filed, *pro se*, a "Petition to Vacate Set Aside or Correct Sentence" regarding the first degree murder judgments. The Circuit Court of Cheatham County dismissed the petition without an evidentiary hearing. Petitioner timely appealed, and the State has filed a motion for this Court to affirm pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. We grant the State's motion, and accordingly affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Lynda Sue Lichtgarn, Memphis, Tennessee, *pro se*.

Paul G. Summers, Attorney General and Reporter; and Renee W. Turner, Assistant Attorney General, for the appellee, the State of Tennessee.

**MEMORANDUM OPINION**

In her "Petition to Vacate Set Aside or Correct Sentence" (hereinafter "petition"), Petitioner alleges that she is entitled to relief because she did not "knowingly, intelligently, and voluntarily" enter the guilty pleas, because she "did not know the sentence she was receiving was illegal." She also alleges that the sentences she received for the offenses are illegal because even though the offenses occurred in 1986, "her time is being calculated according to the statute in effect in 1990, the year in which she was sentenced."

Petitioner goes on to explain that, had she been sentenced under the law as it existed in 1986, she would have been eligible for parole after serving thirty years in prison. However, under the criminal sentencing reform act of 1989, Petitioner alleges her sentence has been calculated to reflect that she will not be eligible for parole until after having served thirty-six years.

The petition was filed in Cheatham County, the county of conviction. In the petition, Petitioner states that she is presently incarcerated at the Mark Luttrell Correction Center in Shelby County.

Insofar as the petition, which is the subject of this appeal, supports its claim upon allegations that Petitioner received an illegal sentence, our supreme court has clarified that the only proper procedure for challenging an illegal sentence at the trial court level is through a petition for writ of habeas corpus. *Moody v. State*, 160 S.W.3d 512, 516 (Tenn. 2005). A petition for writ of habeas corpus must be filed in the county closest to the place of incarceration unless a good explanation can be given for not doing so. T.C.A. § 29-21-105 (1980 & Replac. 2003). Having been filed in Cheatham County instead of Shelby County, the petition cannot be treated as a petition for writ of habeas corpus.

Insofar as the petition asks for relief most properly brought in a petition for post-conviction relief, it was also subject to summary dismissal. Petitioner had already filed a petition for post-conviction relief, and she received a hearing on the merits and the petition was denied in 1993. A petitioner can only file one petition for post-conviction relief. T.C.A. § 40-30-102(c) (2003)). In addition, even if she had not already filed one petition for post-conviction relief, the statute of limitations had run for filing a petition for post-conviction relief attacking convictions in 1990. T.C.A. § 40-30-102(a) (2003)).

Accordingly, the petition was properly summarily dismissed and Petitioner is not entitled to relief on appeal.

### **CONCLUSION**

The trial court's judgment in this case was taken in a proceeding before the trial court without a jury, the judgment is not a determination of guilt, and the evidence in the record does not preponderate against the judgment of the trial court. No error of law requiring a reversal of the judgment is apparent on the record. Accordingly, the judgment is affirmed pursuant to Rule 20, Rules of the Tennessee Court of Criminal Appeals.

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THOMAS T. WOODALL, JUDGE